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Estate and Tax Planning | Estate Exemption Strategies

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Andre Williams:

Any recent changes to trust and estate law or potential legislative changes anticipated soon?

Reid Schlotterbeck:

Yeah, I think there's been a lot of chatter lately with trusts and estates especially. So you think back last year, we would've thought for sure there was going to be some changes that were going to happen to the estate exemption. There was legislation in the pipeline, Biden was really pushing hard to make changes, but nothing ever really materialized. And so now we're kind of in year two and there's still some legislation in the house, but it's stalled and it hasn't gone anywhere. So really most practitioners think that there's not going to be much in the way of new legislation that's going to impact the estate and trust world anytime soon.

So what that means is for 2022, the estate exemption is about $12 million per person. So that's roughly $24 million for a married filing joint couple, which is a huge number really in today's world. But it does impact a handful of individuals that have taxable estates. So more than likely that's going to stay intact. But the thing we have to monitor is that exemption is supposed to go down to about $6 million at the end of 2025. So it's in the law now that there's a sunset provision. Once we get to the end of 2025, the exemption goes from $12 million to six million and it gets reduced in half.

So we really got to think about planning for estates that are in that range or above to see if there's a way we should be doing some strategies now to anticipate that change and that reduction, that estate exemption by about half. So that's really the biggest thing in conferences and talking with other practitioners. It's planning out. And that's kind of nice because we've got two and a half years to think about. So we'll see if there's anything else with policy changes because you just never know what may happen as well.

Andre Williams:

So you've mentioned individuals or families that may have taxable estates. What are some best practices for families or individuals that don't anticipate having a taxable estate?

Reid Schlotterbeck:

Sure. Yeah, that's a great question. So if you are under the exemption limits for single or married filing joint, which a lot of individuals are, then there's still practical things you can do to kind of help manage your estate and help create a wealth transfer mechanism very smoothly. I look at basically three things. First thing is just make sure you've got a well-written will and testament. Contact an attorney, make sure your will is up to date with beneficiaries, with the assets you hold so that if something were to happen, there's something in place that manages your estate.

The second is to think about revocable trusts. Certain assets that are titled in your individual name have to go through probate when you pass away. And probate can be expensive, it can be time-consuming. You share a lot of your assets in the court system. It becomes public knowledge sometimes. So those things are things that need to be avoided, in my eyes. And so if you create a revocable living trust, put assets into the trust, then all those assets will escape probate. So the trust document basically says here's what's going to happen with Reid's assets. They go to the beneficiaries. And then the probate and the courts don't have to worry about just sending the assets out to the estate beneficiaries and you avoid that potential lengthy process in probate.

And the last thing is just to be cognizant of certain accounts, checking accounts, savings accounts, brokerage accounts. All of those, you can designate a transfer on death or a TOD beneficiary. So whether that's your spouse or your kids, you can set up those to be TOD. And once they're set up that way, they immediately go to the beneficiary upon death and those avoid probate as well. So those three things are really just blocking and tackling items to really just help if you don't have a taxable estate situation, but to get yourself solid footing for your estate and will standpoint.

Andre Williams:

Great. Good information. So what are some common trust planning techniques for clients?

Reid Schlotterbeck:

The revocable trust is a big one. We see that a lot. It doesn't create a separate taxable entity. It goes directly on your personal return. The assets are just in a revocable trust. You still have control on it, you still have beneficiary powers. It's in your estate when you pass away. That's a really common one. For a lot of the estate planning that we do where you've got a taxable estate situation or you're thinking that you might down the road, because we work with a lot of privately held businesses, and so those assets may be worth 5 million or so now, but who knows what they're going to be worth in 20 years. So if the right steps are taken, we can do a lot of wealth transfer today to kind of manage some of that estate exclusion and the protection from an estate standpoint down the road.

A really popular tool right now that a lot of estate attorneys and CPAs are using for their clients is what's called a Spousal Lifetime Access Trust, or SLAT for short. And so what the SLAT does is if I'm married, I can give a gift to my wife up to my exemption amount, up to $12 million, with marketable securities, with privately held stock, with cash and put it in a trust for her benefit. And I can also tap into that trust for certain benefits as well. But it's a complete gift. So it's no longer on my side of the estate. It's no longer in her estate from a tax standpoint. It goes to our beneficiaries. We file a gift tax return. We use a certain amount of our exemption up to $12 million, and now those assets are out of our estate, and that growth can be done estate tax-free for the next generation.

So that's a unique tool. Really what that does is it freezes the value because if the asset just sits in our estate, it's just going to continue to grow in value and create potentially an estate tax problem. So we move it out now. The appreciation's going to be outside of the estate for our beneficiaries.

Another popular tool right now is what's called a Grantor Retained Annuity Trust. And what that is, it's another freeze technique where we're going to get the appreciation out of our estate. But what that strategy entails is I set up a grant for, let's say 10 years. I put a million dollars in worth of securities, but I offer to take back a million dollars in cash over the course of a 10-year period. So you don't use any of your estate exemption, which is key, but what you've done is basically substituted those assets out of your estate, the ones that have higher appreciation, those are now outside of your estate, and you're left with the cash which you're going to spend or you're going to burn through. So again, it's another freeze technique. It's very common, but it gets all that appreciation out of your estate and into the next generation's hands.

We've got a lot of clients that use these on a three- and five-year basis. They'll just continue to create these GRATs and let them create all that appreciation and get it out of your balance sheet. And it's a really nice tool for marketable securities. In a market that we had in the last couple years with a lot of appreciation, think about some of the appreciation you could have taken out of your estate and put into the next generation's hands. So it's a powerful tool. With the market the way it is today, you really got to think about what's the best strategy for appreciation, because we have seen a lot of bumpiness in the market where values were down. So those are just some things to think about. But those are probably the two most common estate planning techniques that we see each year.

Andre Williams:

Thank you very much, Reid, for shedding some light on what can be a very complex topic. If you all would like to see or read more, please visit our website at www.barnesdennig.com.